

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

05/30/2002

CLERK OF THE COURT  
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

CV 2002-090027

FILED: \_\_\_\_\_

USERVCO INC

JANICE M PALMER

v.

ROBERT NALL, et al.

ROBERT NALL  
941 W ELLIOT RD #10-8  
CHANDLER AZ 85225-0000

DONNA NALL  
941 W ELLIOT RD #10-8  
CHANDLER AZ 85225-0000  
CHANDLER JUSTICE COURT  
DISPOSITION CLERK-CSC  
REMAND DESK CV-CCC

MINUTE ENTRY

This Court has jurisdiction of this Civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement without oral argument. This Court has considered and reviewed the record of the proceedings from the Chandler Justice Court, its file, and the Memoranda submitted by counsel and the parties. This Court notes that no reply brief was filed by Appellant in this matter.

On September 29, 2000, Appellant/Plaintiff, USERVCO Inc., filed its complaint with the Chandler Justice Court alleging breach of contract by Appellee/Defendants, Robert and Donna

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Nall. Appellee/Defendants filed an answer on January 4, 2001 and made two counterclaims: The first alleging fraudulent misrepresentation and, secondly, that the lawsuit was in violation of law. These two counterclaims were dismissed prior to trial. The case proceeded to trial on Appellant/Plaintiff's claim on October 11, 2001. At the conclusion of the trial the case was taken under advisement by the trial judge, the Honorable Ron Johnson, Justice of the Peace for the Chandler Justice Court. In an order dated October 17, 2001, the judge notes that after trial had concluded he "undertook a complete review of the file and all processes (sic.)".<sup>1</sup> The trial further ordered:

While Defendant did include argument that a Rule 12 demand for items of account, filed in this court January 4, 2001; was never responded to by Plaintiff. This argument failed to capture court's attention, until now. It should be noted that Defendant also submitted a trial memorandum to court at same time as limine motion, which precipitated case review.

For these reasons, court hereby reinstates Defendant counterclaim, dismisses Plaintiff claim and awards for Defendant on counterclaim in the amount of \$99.00 plus \$2,000.00, plus court costs.<sup>2</sup>

Formal judgment was entered November 28, 2001 for Appellees/Defendants. A timely Notice of Appeal was filed by the Appellant in this matter.

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<sup>1</sup> Trial judge's minute entry order of October 17, 2001, record on appeal from Chandler Justice Court.

<sup>2</sup> Id.

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Obviously, Appellant claims a denial of due process in the trial court's reinstatement, on its own motion, of previously dismissed counterclaims which were not scheduled for trial.

First, the trial judge's reasons stated in his October 17, 2001 order for reconsideration of the prior order dismissing all the counterclaims are insufficient as a matter of law. The trial court does not state how Appellant's failure to respond to a Rule 12 demand or Appellee's trial memorandum warranted a reconsideration of the court's previous rulings. More importantly, though the court certainly can reconsider previous rulings, it must do so in a manner so as not to deprive the parties of their rights to a due process fair trial and hearing. Secondly, the only evidence presented to the trial court was presented on Appellant/Plaintiff's complaint. No evidence was presented on Appellees/Defendant's counterclaims. Even assuming, in a best case scenario, that the evidence was similar, the trial court failed to give both parties notice prior to trial that the counterclaims would be an issue. The trial judge effectively denied Appellant its right to confront, cross-examine witnesses, and to present evidence of its own on the issue of Appellees/Defendants counterclaims.

All parties and persons (including corporations) who appear in Arizona courts have the right to due process that is guaranteed by the Arizona Constitution in Article II, Section 4. That right includes the right to receive notice of the charge or complaint, an opportunity to defend on that complaint which includes the right of cross-examination, confrontation, and the right to present one's own witnesses and evidence. When an appellate court finds a denial of any of these essential components of due process, such a denial constitutes fundamental error.<sup>3</sup>

IT IS THEREFORE ORDERED reversing and vacating the trial court's orders and judgments of October 17, 2001 and November 28, 2001.

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<sup>3</sup> See State v. Flowers, 159 Ariz. 469, 768 P.2d 201 (App. 1989).

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IT IS FURTHER ORDERED remanding this case back to the Chandler Justice Court for a new trial on Appellant/Plaintiff's complaint, consistent with this opinion.